

**UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF LOUISIANA**  
**SHREVEPORT DIVISION**

**EUGENE WRIGHT**

**CIVIL ACTION NO. 12-1954-P**

**VERSUS**

**JUDGE HICKS**

**JENIFER WARD CLASON**

**MAGISTRATE JUDGE HORNSBY**

**REPORT AND RECOMMENDATION**

In accordance with the standing order of this court, this matter was referred to the undersigned Magistrate Judge for review, report, and recommendation.

**STATEMENT OF CLAIM**

Before the court is a civil rights complaint filed in forma pauperis by pro se plaintiff Eugene Wright ("Plaintiff"), pursuant to 42 U.S.C. § 1983. This complaint was received and filed in this court on July 18, 2012. Plaintiff is incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. He names Judge Jenifer Ward Clason as defendant.

Plaintiff claims that in 1975, he was convicted of second degree murder and sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence for a period of 20 years. He claims he has served more than 20 years of his sentence and in March 2011 motioned the court to suspend his life sentence and place him on five years active probation. He claims Judge Clason denied his motion without conducting a due process hearing and stated that the court did not have authority to suspend

his sentence. Plaintiff claims Judge Clason's denial of his motion without a hearing was arbitrary and violated procedural due process. He claims that the Louisiana Second Circuit Court of Appeal and the Supreme Court of Louisiana denied his writs for supervisory review.

Accordingly, Plaintiff seeks a declaratory judgment that Judge Clason denied him procedural due process and an injunction ordering Judge Clason to conduct a full and fair hearing on his motion for a suspended sentence and probation and to appoint counsel.

For the following reasons, Plaintiff's civil rights complaint should be dismissed.

### **LAW AND ANALYSIS**

Plaintiff is seeking declaratory and injunctive relief for an alleged unconstitutional sentence. The United States Supreme Court held that in order to recover monetary compensation or damages for an allegedly unconstitutional conviction or sentence or for "harm caused by actions whose unlawfulness would render a conviction or sentence invalid," a prisoner must show that the conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas." Heck v. Humphrey, 512 U.S. 477, 486-87, 114 S.Ct. 2364, 2372 (1994). Courts have also extended the holding in Heck to claims seeking injunctive or declaratory relief pursuant to 42 U.S.C. § 1983. See Edwards v. Balisok, 520 U.S. 641, 648, 117 S.Ct. 1584, 1589, 137 L.Ed.2d 906 (1997); Clark v. Stalder, 154 F.3d 186, 190-91 (5<sup>th</sup> Cir. 1998). Heck involved

a civil rights claim brought by a state prisoner. The Court dismissed the Section 1983 suit until plaintiff could demonstrate that his conviction or sentence had been invalidated.

When a claim comes within the parameters of the Heck teachings, it is not cognizable under 42 U.S.C. § 1983 so long as the validity of the conviction or sentence has not been called into question as defined therein, which requires dismissal of claims not meeting its preconditions for suit. See Johnson v. McElveen, 101 F.3d 423, 424 (5th Cir. 1996).

Plaintiff is seeking declaratory and injunctive relief for civil rights violations under Section 1983; therefore, he must prove that his conviction and/or sentence have been invalidated. He has not met this precondition and his complaint must be dismissed until such time that he can demonstrate that his conviction and/or sentence have been invalidated.

### **CONCLUSION**

Because Plaintiff filed this proceeding in forma pauperis, if this court finds Plaintiff's complaint to be frivolous, it may dismiss the complaint as such at any time, before or after service of process, and before or after answers have been filed. 28 U.S.C. § 1915(e); Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986); Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). District courts are vested with extremely broad discretion in making a determination of whether an in forma pauperis (IFP) proceeding is frivolous and may dismiss a claim as frivolous if the IFP complaint lacks an arguable basis either in law or in fact. Hicks v. Garner, 69 F.3d 22 (5th Cir. 1995); Booker v. Koonce, 2 F.3d 114 (5th Cir. 1993); Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

Accordingly;

**IT IS RECOMMENDED** that Plaintiff's civil rights claims for declaratory and injunctive relief be **DISMISSED WITH PREJUDICE** as frivolous pursuant to Section 1915(e) until such time as the Heck conditions are met.

### **OBJECTIONS**

Under the provisions of 28 U.S.C. 636(b)(1)(C) and Fed. R. Civ. Proc. 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Civ. Proc. 6(b). A party may respond to another party's objections within ten (10) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendation set forth above, within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. See Douglas v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

**THUS DONE AND SIGNED**, in chambers, at Shreveport, Louisiana, on this the 10 day of May 2013.

  
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MARK L. HORNSBY  
UNITED STATES MAGISTRATE JUDGE